Florida Minimum Wage Rising to $6.40

Insights
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On January 1, 2006, the minimum wage for employees working in Florida will rise to $6.40 per hour. This represents an hourly increase of $0.25 over the current Florida minimum wage and $1.25 over the current federal minimum wage. The jump in the Florida minimum wage is a result of the Florida Minimum Wage Amendment passed by Florida voters in November 2004 which set the minimum wage at $6.15 per hour and called for annual increases tied to the rate of inflation.

For "tipped employees" employers will have to pay a direct cash wage of $3.38 per hour to those employees who meet the eligibility requirements for the tip credit under the federal Fair Labor Standards Act. This is an amount equal to the new minimum wage, $6.40, minus the allowable tip credit, $3.02 (assuming that these employees receive enough in tips to generate this credit).

The Cost Of Non-Compliance

With the rate rising in January, now is a good time for employers with employees working in Florida to review their pay practices and ensure compliance with the Florida minimum wage and the federal Fair Labor Standards Act. In Florida, lawsuits alleging wage and hour violations are frequent and ever-increasing in popularity. In recent years, Florida has had more federal wage and hour lawsuits filed than all other states combined. In fact, in one recent daily listing of all new federal cases filed, out of 21 wage and hour cases, 13 were filed in Florida. Compliance is an important measure in preventing probable and expensive litigation.

Such cases can be very costly to employers due to the remedies available. If you are found liable you can expect to pay your employees all of the back wages calculated to be due, liquidated damages in an amount equal to the back wages, and costs and attorney's fees to the employee's attorney. And you will have to pay your own attorney as well. Keep in mind that the amount you may end up paying to the employee's attorney will likely have no relationship to the amount paid to the employee. For example, an employee may only recover a few hundred dollars in back wages while his or her attorney collects several thousand in attorney's fees.

Safe Harbor Created

All of this may seem costly and unjust to business owners who may have made legitimate payroll errors. Help has just arrived. During the just-completed Special Session, the Florida Legislature passed the Florida Minimum Wage Act, which was signed by Governor Bush and became effective on December 12, 2005. This legislation adds some additional implementing provisions to the

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Minimum Wage Amendment. Of the most significance to employers is the creation of a 15-day safe harbor period for an employer to remedy a violation of the Florida minimum wage without the risk of being sued.

Specifically, an employee must notify his or her employer in writing before initiating a lawsuit. The employer then has 15 days from the notice to resolve the claim. This provision is beneficial to both employers and employees because, where a mistake has been made, an employee gets his or her wages without delay and the employer has the opportunity to correct the mistake without having to pay unnecessary attorney's fees.

It should also help alleviate the backlogged court system and may ensure that plaintiffs' attorneys are not using the Florida minimum wage law in an overly aggressive way. While this safe harbor period applies only to Florida minimum wage claims, not federal minimum wage claims, the federal law only enforces the lower $5.15 per hour minimum.

Our Advice

Wage and hour lawsuits are, for the most part, avoidable. Employees have little incentive to seek legal counsel if they are being paid properly. An audit of your payroll practices by a Fisher Phillips attorney or other professional knowledgeable in the wage and hour laws may reveal the existence of improper deductions or improperly categorized employees. Once identified, these errors can be corrected and litigation avoided. With Florida leading the nation in this type of litigation, the employer's maxim should be "It's better to be safe than sued."

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